

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
HINEE’S INC.)	Permit No. RR/SS18-18190
6400 South County Road 560 East)	
Selma, Indiana 47383)	
)	
Delaware County (District 6))	

I. BACKGROUND OF THE CASE

The remonstrator, James Ballinger (Remonstrator), filed a timely notice of appeal and the matter was assigned to the ATC Hearing Judge, Mark C. Webb (Hearing Judge). The Hearing Judge set the matter for hearing on September 14, 2004, and at that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. Neither the Permittee nor the Remonstrator was represented by counsel. The Hearing Judge U-Jung Choe, having reviewed the tape-recorded transcript of the hearing, the evidence submitted to the Commission during the hearing, and the contents of the entire

file, now tenders her Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

II. EVIDENCE BEFORE THE ATC

The following individuals testified before the ATC in favor of the permittee in this cause:

1. Michael Harris, co-owner of Hinee's. He is concerned about sales of alcohol to minors and his employees check identifications very carefully. He had heard the story of a supposedly intoxicated patron of his bar taking out someone's fence, but has been unable to substantiate it. He has not received any official action regarding it. He recently donated to a group of motorcycle riders collecting money for charity. He stated that Rev. Ballinger's church is approximately 2 miles from Hinee's. He disagreed with Rev. Ballinger's assessment of lack of police protection, pointing out that on the weekends, city police and county sheriff's deputies are out in force patrolling the roads around the campground and tavern.

2. Steve Green, co-owner of Hinee's. During the week, operating hours are 10:00 a.m. until midnight. On the weekends, they are closed by 1:30 a.m., depending on the number of patrons. The father of two of their bartenders is a Delaware County Sheriff's Deputy who assists as needed. Mr. Green is there on weekends when the bar closes and ensures that intoxicated patrons do not drive home.

The following exhibits were introduced before the ATC in favor of the Permittee in this cause:

None.

The following individuals testified before the ATC in favor of the Remonstrator and against the Permittee in this cause:

1. James Ballinger, Pastor of the Harris Chapel Church. Hinee's is right across the street from the Prairie Creek Lake campground. The road leading up to Hinee's is too narrow to support the traffic generated by the campground. The weekend is the busiest time for families who use the lake. Alcohol causes additional problems in this setting. There is not enough police protection for the area. He has received complaints that an intoxicated patron of the bar plowed through a yard near his church.¹ He conceded that he had no evidence that Hinee's had broken any laws. He had no evidence that Hinee's is the cause of the increase in traffic, but noted that part of that increase is the result of the increase in home construction. He did cite the number of individuals who have signed petitions against the Sunday sales request.²

The following exhibits were introduced before the ATC in favor of the remonstrators and against the permittee in this cause:

1. Front page section of the *Muncie Star Press*, Muncie, Indiana, Sunday, September 12, 2004.

III. FINDINGS OF FACT

1. The Permittee, Hinee's Inc., 6400 South County Road 560 East, Selma, Indiana (Permittee) is the holder of a type 209 Alcohol and Tobacco Commission (ATC) permit, #RR18-18190. (ATC File).

¹ Other than this bare allegation, no proof of this incident was offered before the LB or before the Commission.

² No evidence was presented regarding any kind of a geographic layout of the area. There is no way to determine how close the housing areas are to the campground and the Permittee, or how many homes could be affected in this case. These issues have been raised by the Remonstrator and it is his burden to provide evidence from which findings could be made as to these questions.

2. Said permit was first issued on February 16, 2000 and has been annually renewed thereafter. (ATC File).
3. Permittee seeks a Type 220 Sunday sales permit pursuant to Ind. Code § 7.1-3-16.5-2. (ATC File).
4. Permittee has tendered the required fee in support of the requested permit. (ATC File).
5. The Remonstrator object to the granting of a Sunday sales permit because he claims no need or desire for the services at that location (LB Hearing; ATC Hearing).
6. The Remonstrator, however, presented no evidence that connected the patrons of the permit premises to the alleged problems of order in the recreation area of Delaware County. (LB Hearing; ATC Hearing).
7. The Remonstrator further acknowledged that he had nothing specific against the permit premise, but was protesting against a trend of increasing alcohol related problems in the recreation area of the Delaware County. (ATC Hearing).
8. The Permittee has completed the Indiana server training program. (ATC Hearing).
9. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV. CONCLUSIONS OF LAW

1. The Permittee, Hinee's Inc., 6400 South County Road 560 East, Selma, Indiana (Permittee) is the holder of a type 209 Alcohol and Tobacco Commission (ATC) permit, #RR18-18190. (ATC File).

2. Indiana Code § 7.1-3-16.5-2 provides for the issuance of a Sunday sales permit for an establishment which operates more than seven months per year only if that establishment has at least \$100,000 of gross retail sales in food annually, or \$100,000 of food and beverage sales annually, where at least \$50,000 is from the sale of food.

3. The cost of a permit for a retailer who sells alcohol on Sunday under the authority of Ind. Code § 7.1-3-16.5-2 is \$250 annually. Ind. Code § 7.1-4-4.1-9(d)(1).

4. Permittee meets the requirements of Ind. Code § 7.1-3-16.5-2.

5. Permittee has shown a need and desire for the services at that location. 905 IAC 1-27-4.

6. The Commission may not reverse the LB's action in granting the said permit unless it finds that the LB's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

7. The LB's action in granting the application for a supplemental sales permit for the permit premises was not (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. *Id.*

8. Any Conclusion of Fact may be considered a Finding of Law if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the findings of the LB to recommend approval of the application for a supplemental sales permit in this matter was based on substantial evidence and must be sustained. And it is further ordered, adjudged, and decreed that the evidence adduced at the ATC appeal hearing was in favor of the Permittee and in favor of the recommendation of the LB. The appeal of the Remonstrator in the matter of the Hinee's Inc., 6400 South County Road 560 East, Selma, Indiana for the application of a Type 220 supplemental sales permit, #RR/SS 18-18190 is DENIED and the recommendation of the LB in this matter is sustained, and the application for a supplemental sales permit is hereby GRANTED.

DATED: _____

U-JUNG CHOE, Hearing Judge